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In re application of: Eric Inselberg Group Art Unit: 2681
Serial No.: 10/792,170 Examiner: N/A
Filed: March 3, 2004
For: **"METHOD AND APPARATUS FOR INTERACTIVE AUDIENCE
PARTICIPATION AT A LIVE SPECTATOR EVENT"**
Matter No.: 0128-1 CON CIP2

Bedminster, N.J. 07921
August 16, 2004

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

ATTENTION: Group Director, Group 2681

Sir:

PETITION TO MAKE SPECIAL FOR NEW APPLICATION
UNDER M.P.E.P. § 708.02 (VIII)

Applicant hereby petitions to make special this new application. The application has not yet been examined by the United States Patent and Trademark Office (the "Office").

Applicant submits that all of the claims in this case are directed to a single invention. If the Office determines that all claims presented are not obviously directed to a single invention, then applicant will make an election, without traverse, as a prerequisite to the grant of special status.


A pre-examination search of the subject matter encompassed by the above-identified application has been made by a professional searcher. The pre-examination search was conducted in the United States Patent and Trademark Office. The field of search covered Class 463, Subclasses 39, 40, and 42; and Class 725, Subclasses 9 and 13. Copies of the references developed by the pre-examination search were submitted with applicant's Information Disclosure Statement dated July 30, 2004. A statement pertaining to the pre-examination search listing the references deemed most closely related to the subject matter encompassed by the claims is submitted herewith.

Applicant also submits herewith a detailed discussion of the references, which discussion particularly points out how the claimed subject matter patentably defines over the references.

Enclosed herewith is a check in the amount of \$130, to cover the fee for this Petition. In the event that any additional fee is deemed to be required by 37 C.F.R. 1.17(h), it is requested that applicant's attorney be contacted at (908) 901-0220 and provided an opportunity to effect payment thereof.

A duplicate of this petition is attached.

Respectfully submitted,
Eric Inselberg

By 
Ernest D. Buff
(His Attorney)
Reg. No. 25,833
(908) 901-0220



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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**STATEMENT PERTAINING TO PRE-EXAMINATION SEARCH
IN ACCORDANCE WITH MPEP § 708.02(VIII)**

In accordance with MPEP § 708.02 (VIII), applicant, by and through his attorney, hereby submits that a pre-examination search was made for the above-identified application. The search was conducted by applicant's agents at the United States Patent and Trademark Office. The field of search covered Class 463, Subclasses 39, 40, and 42; and Class 725, Subclasses 9 and 13. A computer database search was also conducted on the USPTO systems EAST and WEST. Examiner Mark Sager in Class 463 (Art Unit 3714) was consulted to confirm the field of search. In addition, patents cited by the Examiner during the course of prosecution of a related application, now issued as U. S. Patent 6,434,398 B1 to Inselberg, were considered.

The search identified eighteen (18) U.S. utility patents, four (4) published U.S. utility

patent applications and three (3) Internet literature documents, which were obtained from the World Wide Web. The patents identified are set forth below:

United States Patents

US Patent Number	Inventor(s)
4,141,548	Everton
4,496,148	Morstain et al.
4,722,526	Tovar et al.
5,213,337	Sherman
5,226,177	Nickerson
5,273,437	Caldwell et al.
5,526,035	Lappington et al.
5,724,357	Derks
5,801,754	Ruybal et al.
5,860,862	Junkin
5,916,024	Von Kohorn
5,946,635	Dominguez
5,993,314	Dannenberg et al.
6,080,063	Khosla
6,193,610 B1	Junkin
6,293,868 B1	Bernard
6,434,398 B1	Inselberg
RE 35,449	Derks

The following published U. S. Patent Applications were revealed by the search:

United States Published Patent Applications

PAT. APP. PUB. NO.	INVENTOR(S)
2002/0029381 A1	Inselberg
2002/0115454 A1	Hardacker
2002/0119823 A1	Beuschler
2002/0199198 A1	Stonedahl.


The search also identified the following Internet publications:

Internet Publications

Publication	Title
www.MeridiaARS.com	Merida® Audience Response
www.replysystems.com	Wireless Audience Response and Voting Systems
www.presentationtesting.com	Presentation Testing

Each of the foregoing references has been identified and discussed in the Detailed Discussion of the References Submitted in Compliance with MPEP § 708.02(VIII).

Respectfully submitted,
Eric Inselberg


By _____

Ernest D. Buff
(His Attorney)
Reg. No. 25,833
(908) 901-0220



Attorney Docket No.: 0128-1 CON CIP2

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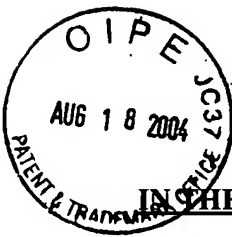
Certificate of Mailing by First Class Mail

I hereby certify that this correspondence is being deposited with the United States Postal Service as First Class Mail in an envelope addressed to the Commissioner for Patents, Alexandria, VA 22313-1450 on August 16, 2004.


Signature

Ernest D. Buff
Attorney of Record

August 16, 2004
(Date)



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Sir:

**DETAILED DISCUSSION OF THE REFERENCES SUBMITTED
WITH THE INFORMATION DISCLOSURE STATEMENT
IN COMPLIANCE WITH MPEP § 708.02 (VIII)**

In accordance with MPEP § 708.02(VIII), applicant hereby submits a detailed discussion of references applicable to the above-identified application (hereinafter, "the Interactive Audience Participation System"). Each of these references was listed in the Information Disclosure Statement filed with the United States Patent and Trademark Office on July 30, 2004, in connection with the above-identified application.

A. U. S. Patent No. 4,141,548 to Everton

U.S. Patent No. 4,141,548 to Everton (hereinafter the '548 patent) discloses a spectator participation game apparatus for use in conjunction with the observation of a program or sporting event such as a football game in which one or more observers on separate game apparatuses try to predict the type of "play" or occurrence which will next ensue, as well as predicting separately the outcome or results of the succeeding play. Each spectator's apparatus comprises a plurality of prediction switches designated by specific, game-related terms. The spectator participates in the activity by activating the switches prior to a given play. After the play is completed, the user's prediction is evaluated and points

are awarded and displayed on the device based on the accuracy of the prediction. Preferably the control unit is electronically connected to the individual selector panels either by hard wiring, printed circuitry, wireless transmission, or through a combination of the above methods of connection.

Significantly, the game apparatus disclosed by the '548 patent is specifically tailored to a given sport, with the switches on the input area associated with specific aspects of the subject sport. The questions asked are solely directed to specifics of upcoming plays. Furthermore, the game apparatus disclosed by the '548 patent has very limited display capacity.

By way of contrast, the Interactive Audience Participation System recited by applicant's claims 1-70 does not entail limitation of questions to game strategy as a consequence of the specificity of the hardware of the wireless user interactive device. Instead, messages of any content, including various questions, may be presented to users, either by their respective interactive devices or by announcement or display at the stadium or similar venue.

These salient features, delineated by present claims 1-70, are not disclosed or suggested by the '548 patent. Accordingly it is submitted that the '548 patent presents no obstacle to patenting of the system defined by applicant's claims.

B. U. S. Patent No. 4,496,148 to Morstain et al.

US Patent 4,496,148 to Morstain et al. (hereinafter the '148 patent) discloses a sports analysis device for use by at least one user in conjunction with observation of an actual sporting event. The device is said to be a portable, battery-powered, microcomputer-controlled electronic device which permits the user to both record and assess his own play strategies for a variety of team sports, the device being selectively dedicated to a particular team sport at a given time. The device further comprises a keyboard for selecting a responsive play strategy deemed by the user(s) to be a play strategy appropriate for implementation at a given point in the actual sporting event, and for entering into the device data indicating the actual play and results occurring in the sporting event. The device is preferably equipped with a keypad scanner, which is removable and interchangeable so as to convert the device from one

type of sporting event to another.

Significantly, the device of the '148 disclosure is not characterized as a wireless device. In addition, the '148 patent discloses only a device capable of receiving and transmitting messages through input and output ports connecting the device to an external unit, such as a console or central control unit. Moreover, there is no disclosure or suggestion that the user be queried to provide an answer to a question. In addition, the '148 device is limited to responses directed to a limited repertoire of questions which require answers to aspects of game strategy that are pre-programmed in a keypad scanner specific to a given sport. By way of contrast, the Interactive Audience Participation System called for by present claims 1-70 does not rely on questions or selection options pre-programmed in a user interactive device. Instead, the questions are promulgated from a central source, by either public display or announcement or individualized transmission to a user's general-purpose interactive device. As a result, the questions may involve a wide range of subjects, and the answers elicited may take on a wide variety of forms that are not limited to a small number of predetermined forms.

These structural, functional, and procedural differences provide ample basis for predicated patentability of applicant's claims 1 – 70 over the '148 patent disclosure.

C. U. S. Patent No. 4,722,526 to Tovar et al.

US Patent No. 4,722,526 to Tovar et al. (hereinafter the '526 patent) discloses a game method and apparatus for use while viewing a sporting event. Players of the game attempt to correctly call as many penalties or infractions of the requisite rules. Each player is provided with a signaling device to be activated upon recognition of an infraction. The first player to correctly signal an infraction also noted by game officials is awarded multiple points, while players who subsequently detect the infraction correctly are awarded a lesser number. A selected number of points is deducted for signaling when no infraction is called by the game officials. The game is appointed to be played by TV viewers at home or by participants at the game venue. There is further disclosed an apparatus for the practice of the method.

Significantly, the '526 patent does not disclose or suggest any method involving the use of a wireless interactive device. Instead, the user device is said to be "coupled" to a microprocessor via a data bus. In addition, there is no suggestion in the '526 patent that the user device or other apparatus be appointed to receive and display messages. Still less does the '526 patent disclose or suggest that a wireless device be used for responding to queries presented to a given user. Rather, the control functions of the user device provided by the '526 disclosure are limited to pushbutton switches that are dedicated to a limited number of specific functions, i.e. to signal an on-the-field infraction or no infraction, and a reset function. Consequently, the device disclosed by the '526 patent has at best a limited function that inhibits its use when responding to any stimulus other than its preselected repertoire of intended game functions.

By way of contrast, the Interactive Audience Participation System recited by present claims 1-70 comprises an interactive device capable of wirelessly receiving messages and transmitting messages based on user entry through a user input interface. In addition, in operation of the system called for by applicant's claims, the user is presented, either through the interactive device or via announcement or display at the event venue, with queries. The user responds with an answer through the user input interface. The answers from the various users are received and transferred to a central processor.

The foregoing structural and operational distinctions are submitted to provide ample basis upon which patentability of applicant's claimed Interactive Audience Participation System over the '526 patent can be predicated.

D. U. S. Patent No. 5,213,337 to Sherman

U. S. Patent No. 5,213,337 to Sherman (hereinafter the '337 patent) discloses a communication system using an encoded audio broadcast signal, which is played over the speaker of an ordinary television or radio. The signal is encoded with tones representing a variety of information. Members of the public do not need special receiving equipment to receive the information, which is encoded in-band in the same broadcast as a television or radio program, and so is detectable by a

listening device directly from the usual speaker and can be taped for later or repeated use by a broadcaster or listener. The encoded information is said to be substantially indiscernible to people watching or listening to the program which contains the information and therefore does not disturb an ordinary program or require blanking of part of the program signal to provide a dedicated portion for encoded information. The apparatus employed for detecting and decoding the encoded information need not be aimed or attached in any way to the receiver. Further, the '337 system operates through the audio portion of a broadcast signal, so it is useful with any television or radio receiver. A listening device including means for detecting and decoding the information is provided which can be placed anywhere in proximity to a television or radio receiver.

Significantly, the system disclosed by the '337 patent is a one-way system, in which information is conveyed by tones, such as conventional "touch-tone" sounds. These information-containing sounds are superimposed on the audio portion of a radio or television broadcast. Such a system is strictly limited in the information that can be carried, since the tones are said not to be intrusive and only a small number of possible combinations of tones are provided by which messages can be encoded. Since the '337 patent lacks any disclosure or suggestion of transmission of information or messages from a user to any other entity, any system constructed in accordance with its teaching inherently cannot be used to receive queries and accept and transmit answers thereto, as required by the system of applicant's claims 1-70. Moreover, the '337 system requires a listening device in proximity to a television or radio receiver, limiting the mobility of a system user, whereas the system called for by applicant's claims does not.

These structural, functional, and operational differences strongly support patentability of applicant's claims 1-70 over the '337 patent disclosure.

E. U. S. Patent No. 5,226,177 to Nickerson

US Patent No. 5,226,177 to Nickerson (hereinafter the '177 patent) discloses a system for collecting data from a plurality of respondents having a central portion with a central processor and a base station and a remote portion with a plurality of wireless response units. The respondents are

prompted to enter response data to a visually perceptible display, which may be shown live, on a television monitor, or may be taped. The central processor accumulates the response data via radio, optical, or acoustic communication links with the remote units, each of which has a unique address, and displays the accumulated data in real time.

Unlike the present invention, the '177 patent does not disclose or suggest a system to be used in connection with spectators attending a live spectator event. Instead, the system elicits responses from a small number of respondents in a group setting, and optionally from respondents in a plurality of separately conducted group sessions. The respondents are suggested to be recruited according to the research specifications of a particular project. The system is said to be highly flexible, portable, and easily transportable for usage at multiple test sites with various room layouts.

By way of contrast, the Interactive Audience Participation System recited by applicant's claims 1-70 affords an opportunity to a large number of spectators to participate while attending a live spectator event. By using a wireless interactive device to respond to queries posed, the spectator's experience and enjoyment of the live event is enhanced. The opportunity to participate interactively in contests and the like is presented by applicant's claimed system through the user's wireless device.

In light of these structural and functional differences, the system and method of applicant's claims 1-70 patentably distinguishes the '177 patent disclosure.

F. U. S. Patent No. 5,273,437 to Caldwell et al.

US Patent No. 5,273,437 to Caldwell et al. (hereinafter the '437 patent) discloses an audience participation system and method using wireless transmission. Modules employed by members of an audience have a keypad or other means activatable by audience members to respond to questions posed by a speaker during a presentation. The modules encode the answers into an electrical pattern transmitted to a base station. The data are received, collected, and statistically analyzed according to the wishes of the speaker, and then displayed to present a statistical analysis of the collective response of the audience.

The '437 patent does not disclose or suggest any method or system appointed for use at a live spectator event, as required by the system of present claims 1-70. Rather, the disclosure is directed to a system used in the altogether different context of a speaker communicating with an audience.

These functional and operational differences strongly evidence patentability applicant's claims 1-70 over the '437 patent disclosure.

G. U. S. Patent No. 5,526,035 to Lappington et al.

U. S. Patent No. 5,526,035 to Lappington et al. (hereinafter the '035 patent) discloses an interactive television system where interactive information is inserted in the vertical blanking interval of a standard television signal. The signal is received and decoded by a set top decoder, which sends the decoded signal via an infrared signal to a handheld device. The viewer using the handheld device can interact with a game, sports, or educational event or other presentation on the television. The system includes a proprietary high-level command language and programmer (PIU) tables, which are maintained in the memory of the handheld device. The PIU tables store the transactions of the various events presented on the television. The transactions are sent from the insertion system to the decoder throughout the broadcast of the television program. Thus, for a sports event with interleaved commercials, one or more of the PIU tables would be used to store a collection of transactions used for the main event and one or more additional PIU tables are used for storing transactions for each of the interleaved commercials. This system allows a viewer to enter and exit any event at any time without having to wait for information to be downloaded and without losing any scores. Further, the system allows the user to change from event to event such as, for example, by tuning to different stations and be able to immediately interact and have responses scored and stored.

Significantly, the system disclosed by the '035 patent includes only provision for a user to receive information; unlike the system required by present claims 1-70, no provision is made for transmitting information from the viewer back to any entity. In contrast to the system recited by present

claims 1-70, any system constructed in accordance with the disclosure of the '035 patent lacks the capability of receiving answers entered by a user in response to a query and of processing the answers and announcing the results. Moreover, the practice of the '035 patent generally requires not only a conventional television set, but also an outboard "set top" decoder apparatus. While the handheld device itself is a wireless device operating via an infrared signal, the required ancillary decoder apparatus must be associated with a television set. This required association with a television set is not required by the system of applicant's claims 1-70.

These structural, procedural, and operational differences are submitted to provide the basis for predicated patentability of present claims 1-70 over the '035 patent teaching.

H. U. S. Patent No. 5,724,357 to Derks

US Patent No. 5,724,357 to Derks (hereinafter the '357 patent) discloses a wireless remote response system that includes a base unit, which retrieves user-entered responses from a plurality of remote response units, each of which is provided to a user. The base unit transmits a base data package over a wireless communications link to the plurality of remote response units, which decode the base packer and load into memory a portion of the decoded base package at each response unit. Each response unit examines the characters loaded into the memory and determines any character in the portion of the decoded base package that pertains to that particular response unit.

The system disclosed by the '357 patent is said to retrieve, at a base unit, user responses entered in the individual response units and be particularly adapted to obtaining individual responses of audience members to a question put to them. The invention finds application as an educational aid for determining the comprehension level of pupils in a class and as a commercial tool for conducting audience preference polls and the like. Also suggested is application for remote order entry at restaurants, commodity trading exchanges, and the like.

Significantly, the '357 disclosure does not provide use of the system in connection with a live spectator event. By way of contrast, the system defined by present claims 1-70 is appointed to be

used by spectators at a live spectator event, who respond to questions posed. The system called for by applicant's claims thus enhances the participants' enjoyment of the spectator event. Spectators are enabled to participate interactively, and their attention is more strongly drawn to their interactive devices.

These functional and operational differences patentably differentiate present claims 1-70 from the '357 patent disclosure.

I. U. S. Patent No. 5,801,754 to Ruybal et al.

US Patent No. 5,801,754 to Ruybal et al. (hereinafter the '754 patent) discloses an interactive theater network system linking a plurality of motion picture theater auditoriums to permit live, interactive events to be conducted with theater audiences throughout the theater network. An origination site broadcasts information relating to the interactive event, and a plurality of network theater auditoriums are interactively linked with the origination site. Each network theater includes a full-motion picture projection system configured to receive the interactive event information from the origination site and present the information to the theater audiences. The interactive event information is transmitted from the origination site to the plurality of network theaters with a broadcast communication system. An audience response system provides interactive communication between the origination site and audience members from the network theaters. As part of the audience response system, a data collection system collects and processes data relating to the interactive event that is generated from the audience members. An interactive communication system also provides audio and video communications during the interactive event between audience members across the network and the origination site. Business meetings, seminars, research sessions, training sessions, conferences, polling, sports viewing, "town hall" meetings, awards presentations, multi-media business presentations, and interactive distance learning are said to be interactive events for which the system may be used.

In addition, the '754 patent discloses the provision of wireless keypads in research sessions or other events where audience participation is desired. The audience response keypads

include an alphanumeric keypad so that audience members can key-in data at appropriate times during an interactive event. Each keypad transmits radio frequency (RF) signals that are collected by an RF collector located substantially near the back wall of each theater auditorium. To avoid missing any RF signals within the theater auditorium, plural antennas (72 and 74) are suggested to capture all signals.

Significantly, there is no disclosure or suggestion of any wireless keypad or other individual user interactive device having an output interface or display usable for displaying any message or other data information.

By way of contrast, the present interactive audience participation system, as defined by applicant's claims 1-70, employs a wireless interactive user device having both input and output capabilities. Each user of applicant's claimed system enters responses to queries using the input interface of the device and receives messages using the output display means. Advantageously, the system required by applicant's claims engages a user in interactive queries to enhance the user's enjoyment of the live spectator event he/she is attending.

The foregoing structural, functional, and operational differences strongly support patentability of applicant's claims 1 – 70 over the '754 patent disclosure.

J. U. S. Patent No. 5,860,862 to Junkin

US Patent No. 5,860,862 to Junkin (hereinafter the '862 patent) discloses an interactive apparatus and method allowing participants to compete in an interactive game based on an event, which is occurring in real time. A ticker tape or some other visual display or audio broadcast or the like is shown or broadcast on a device of an interactive apparatus with real time score values indicative of the players' performance in the event. Using the interactive apparatus, the participants select and trade members on the team using a menu displayed or broadcast on the interactive device. The menu provides relevant information regarding the performance of the participant's team, and allows the participant to select and trade members on the participant's team with members listed in a contest roster database while the event is occurring in real time. Information is provided the participant by a means

such as a “ticker tape” scrolling in a portion of a video display or television. By allowing the participant to interact in real time, the intellectual challenge and emotional enjoyment of the interactive game are said to be greatly enhanced.

Significantly, the participants in the method disclosed by the ‘862 patent are not spectators present at a live spectator event. Instead, the disclosed method entails fantasy-type game play in which participants assemble a hypothetical team comprising actual event competitors. Scores for the participants in the ‘862 game are calculated based on events transpiring in the actual game.

On the other hand, the applicant’s claims 1-70 define a system for spectators present at a live spectator event. In accordance with applicant’s claimed system, spectators participate in contests and the like by employing a wireless, interactive user device. The participating spectators respond to queries posed either through the user device or by display or announcement at the venue of the live event. As a result, the spectator participants of applicant’s claims are afforded excitement and enjoyment by interactively participating in the question and answer interchange.

These structural and procedural differences provide grounds operative to patentably differentiate the system and method recited by applicant’s claims 1-70 from the ‘862 patent disclosure.

K. U. S. Patent No. 5,916,024 to Von Kohorn

U. S. Patent No. 5,916,024 to Von Kohorn (hereinafter the ‘024 patent) discloses a system and method for evaluating responses to broadcast programs, such as television programs. The system includes an instructional signal modulated onto a signal transmitted concurrently with the television program, or time-multiplexed with the television signal. Members of a home audience, such as viewers of a televised video game or quiz show, may receive two broadcasted signals. The first signal is the broadcast signal itself, which may be broadcast from a radio or television station to the listening or viewing audience. The second signal is a signal setting forth a task, such as answering one or more questions that may be viewed on a television screen and/or listened to over the radio or the audio portion of the television transmission. Inherently, practice of the Von Kohorn method requires

ancillary use of a normal television or the like.

Significantly, the '024 patent does not suggest or disclose a system appointed for use at a live spectator event, as required by applicant's claims 1-70. Unlike the system of present claims 1-70, there is no disclosure of a user interface of an interactive device that is configured to be employed by a spectator at the live spectator event. As a result, the experience of attending and participating in a live event is lost for a user of any system constructed in accordance with the disclosure of the '024 patent. The apparent sole objective in the '024 disclosure is to provide interactivity for a person who is viewing or listening to a television or radio program at home, i.e., not at the live event. More specifically, the '024 disclosure provides an interactive device for the viewer/listener of a broadcasted program. None of the embodiments provided by the '024 reference suggests or discloses a system and method that may be employed at a live spectator event. Instead, any system constructed in light of the '024 patent employs broadcasted signals of a program and use of an ancillary receiver, such as a conventional television set to provide the at-home viewer with additional signals bearing the interactive content. These components, and the environment wherein they are used, are not required by the system of applicant's claims, which employs, instead, a user interface of an interface device configured to be employed by a spectator at a live spectator event.

In view of these functional and operational differences, applicant's claims 1-70 patentably define over the '024 patent disclosure.

L. U. S. Patent No. 5,946,635 to Dominguez

US Patent No. 5,946,635 to Dominguez (hereinafter the '635 patent) discloses a configurable hand held radio monitor for use in monitoring sporting events. In particular, the radio monitor is specifically adapted for automobile racing sporting events and includes an onboard microprocessor for controlling a radio receiver. A removable memory card is provided which includes a series of predetermined radio frequencies, which are used by the microprocessor when the memory card is inserted into the radio monitor housing. A removable and replaceable keypad overlay is additionally provided to correspond to the information recorded on the memory card. With the keypad

overlay and the memory module, the radio monitor is adapted to operate at a specific racing event or a specific racing division.

Significantly, the device disclosed by the '635 patent is a receiving device for which no transmitting capability is provided. The receiver is configurable to receive conventional radio and TV channels and communication channels used by competitors in the sporting events, such as the driver, pit crews, and other members of a team competing in a motorcar-racing event. The device is said to have certain other functions, such as timers, used by the fan. However, there is no disclosure or suggestion of a device employed interactively by the fan to participate in contests or in answering other queries as part of the experience of the sports event. Neither is there any provision by which the responses of plural fans can be collected and processed by a central processor.

By way of contrast, the interactive audience participation system called for by applicant's claims 1-70 employs a wireless device by which spectators at a live event participate interactively in answering queries posed either by messages displayed on the wireless device or announced or displayed at the venue. Answers received are accumulated and analyzed. The operation of applicant's claimed system beneficially enhances the experience and enjoyment of the participants.

In view of the foregoing structural and operational differences, patentability of the Interactive Audience Participation System and method delineated by claims 1 – 70 over the '635 patent disclosure is clearly predicated.

M. U. S. Patent No. 5,993,314 to Dannenberg et al.

US Patent No. 5,993,314 to Dannenberg et al. (hereinafter the '314 patent) discloses an interactive audience participation system, which utilizes audio command signals, such as loudness or sound intensity, transmitted by different audience groups. These respective audio command signals are detected to determine the aggregate of the signals for each group and then the detected aggregates are converted into data. An audience sensed interactive communication medium device, such as a large stadium video screen, is correspondingly manipulated by the detected data so that the audience may

play a competitive or collaborative game.

Significantly, the '314 patent does not disclose or suggest any interactive audience participation system in which individual interactive devices are used by spectators at a live spectator event to send and receive information. Instead, the disclosed system employs electronic means to analyze audio signals, which are presumed to be indicative of the aggregate expression of the spectators. As a result, the '314 system inherently has no ability to associate responses with specifically chosen and verifiable groups, let alone with individual participants. Moreover, the lack of specificity of audio signals due to the fluctuating and unpredictable levels of extraneous noise, especially in a large crowd, that are difficult or impossible to differentiate from responses to questions or other stimuli intended to elicit a spectator response. At best, analysis of crowd audible response is imperfect and fraught with significant margin of error.

By way of contrast, the Interactive Audience Participation System recited by present claims 1-70 relies on individual, wireless interactive devices used by each participating spectator. As a result, with the system of applicant's claims, responses may be entered in an unambiguous form, facilitating analysis and markedly improving the specificity and reliability of the analysis. In a preferred embodiment of applicant's claimed system, each unit is individually addressable, allowing inputs to be associated with specific users.

These structural and functional differences clearly distinguish applicant's claims 1-70 from the '314 patent disclosure on a patentable basis.

N. U. S. Patent No. 6,080,063 to Khosla

US Patent 6,080,063 to Khosla (hereinafter the '063 patent) discloses a game play system that allows remote players to participate in a concurrent simulation of a live event as the live event is occurring. The system operates by gathering input from the live event through sensors located at the live event's venue, and by gathering user input from a remote participant through a user interface. These inputs are transmitted to a computer system where they are used to generate a display of the

simulation, which reflects what is actually happening at the live event, as well as the effect of user commands on the live event simulation. The display includes “entities” corresponding to real participants in the live event as well as “entities” corresponding to simulated participants in the live event. The remote game players can interact with the concurrent simulation by providing input thereto through the user interface. Remote game players may additionally compete against each other to determine an overall global winner amongst the remote game players in the live event.

Significantly, the ‘063 patent contemplates a game play system to be played by remote players, i.e. persons not present at a live spectator event. There is no disclosure or suggestion of a wireless, interactive device used by a spectator at the live event to transmit and receive messages. Neither is there any suggestion that spectators are queried and prompted to enter a responsive message appointed to be processed by a central processor.

The Interactive Audience Participation System defined by present claims 1-70, on the other hand, teaches the use of a wireless device by which spectators at a live event participate interactively in responding to questions posed either by display on the wireless device or by public announcement or display at the live event venue. Advantageously, the Interactive Audience Participation System called for by applicant’s claims provides spectators with additional opportunities by which the excitement and enjoyment of the live event may be enhanced.

Based on these structural, operational, and functional differences, patentability of applicant’s claims 1-70 over the ‘063 patent disclosure is clearly predicated.

O. U. S. Patent No. 6,193,610 B1 to Junkin

US Patent No. 6,193,610 B1 to Junkin (hereinafter the ‘610 patent) discloses an interactive apparatus and method that allows participants to compete in an interactive game, such as a contest or sporting event, occurring in real time or as a taped broadcast of a real time event. The event with which the participant may interact is broadcast live or previously taped but not aired. At home, participants can play along with the broadcast on a real time basis as a previously taped segment of the

television show is aired. Interactive play may be accomplished by access to an on-line version of the game while the corresponding game show airs live or is rebroadcast to the participant for the first time on television. Using the interactive apparatus, the participants select and trade members on the team using a menu displayed or broadcast on the interactive device. The menu provides relevant information regarding the performance of the participant's team, and allows the participant to select and trade members on the participant's team with members listed in a contest roster database while the event either is occurring in real time or is presented through the playback of a tape recording.

Significantly, the participants in the method disclosed by the '610 patent are not spectators present at a live spectator event. Instead, the disclosed method entails fantasy-type game play in which participants assemble a hypothetical team comprising actual event competitors. Scores for the participants in the '610 game are calculated based on events transpiring in the actual game.

On the other hand, applicant's claims 1-70 define a system for spectators present at a live spectator event. In accordance with the system of applicant's claims, spectators participate in contests and the like by employing a wireless, interactive user device. The participating spectators delineated by applicant's claims respond to queries posed either through the user device or by display or announcement at the venue of the live event. As a result the spectators of applicant's claimed system are afforded excitement and enjoyment by interactively participating in the question and answer interchange.

In light of these structural and procedural differences, instant claims 1-70 patentably define over the '610 patent disclosure.

P. U. S. Patent No. 6,293,868 B1 to Bernard

US Patent No. 6,293,868 to Bernard (hereinafter the '868 patent) discloses a game to be played by fans of sports events such as baseball, football, basketball and soccer. Each player makes advance predictions regarding the outcome they expect to occur during the event. The player records his predictions in a form that can be checked by a computer. The record of the player's predictions

either is transmitted to a remote analysis location or is analyzed within the computer in which the predictions were made. The predictions of each player are analyzed and compared to actual actions occurring during the event, and scores are given to each player based on the accuracy of his predictions. In an embodiment predictions are made on scan cards that are manually collected and then automatically read and scored by computer-controlled equipment made by Scantron Corporation. In another embodiment, predictions are transmitted electronically from the player's stadium seat to the analysis location. In still another embodiment, predictions and actual results are entered into a personal computer that analyzes the predictions for accuracy.

Significantly, the '868 patent does not disclose or suggest any activity that entails use of a wireless interactive device. Moreover, the player terminal provided by the '868 patent is not disclosed to have any form of output. Rather, it has only input capability, and so inherently it cannot function to receive and/or display messages to the terminal's user.

On the other hand, the interactive audience participation system recited by present claims 1-70 employs a wireless interactive device by which a user is enabled to send and receive messages that include queries to the user and entry of responses to such queries. The use of a wireless device advantageously affords the user of applicant's claimed system the possibility of participating at any time during his attendance at the live event, including times when he is away from an appointed seat to purchase food, beverage, or other concession items and souvenirs, or to attend to personal needs. Moreover, the ability of the interactive device to receive and display incoming messages affords significant functionality to the system defined by applicant's claims, which is not available in any system disclosed or suggested by the '868 patent.

These structural, operational, and functional differences patentably differentiate the system delineated by present claims 1-70 from the '868 patent.

Q. U. S. Patent No. 6,434,398 B1 to Inselberg

US Patent No. 6,434,398 B1 to Inselberg (hereinafter the '398 patent) discloses an

interactive audience participation method and device. The instant application Serial Number 10/792,170 claims priority of the '398 patent.

The '398 patent and the instant application share a common inventive identity. Consequently, the '398 patent is unavailable as prior art under 35 USC §102 (a) or (e) against the instant application.

Since the issued claims of the '398 patent do not claim the same invention as the Interactive Audience Participation System delineated by the independent claims of the instant application, a rejection for statutory double patenting would be improper. Any obviousness-type double patenting rejection of the instant application over the '398 patent can be obviated by the filing of a suitable statutory disclaimer.

In light of these procedural considerations, the Interactive Audience Participation System delineated by applicant's claims 1-70 patentably defines over the '398 patent.

R. U. S. Patent No. RE 35,449 to Derks

US Patent No. RE 35,449 to Derks (hereinafter the '449 patent) discloses a method and apparatus for obtaining the individual responses of audience members to a question put to them, and in particular to a method and apparatus including remote units operated by audience members to record a response and a central control unit to retrieve the responses stored in the remote response units. The invention is said to find application as an educational aid to determine the comprehension level of the pupils in a class, or for commercial use in conducting audience preference polls and the like.

The disclosed apparatus comprises a remote response system including a central control unit and a plurality of remotely located response units each having keypads for entering a selection from a user. The central control unit sequentially transmits distinct address words and includes redundant receivers for receiving data words transmitted by response units. Each response unit becomes powered-up upon the entry of a user response and transmits a data word, corresponding to the

user selection, upon receipt of its unique address word. The central control unit examines the validity of each data bit received and the validity of an entire data word to determine if both a character and its complement are received. If a valid data word is received, the central control unit transmits an acknowledge bit, which powers-down the response unit that sent the valid word. Each response unit transmits its data word simultaneously with the central control unit transmitting the address word for the next unit that is to respond with the transmissions occurring over distinct frequency channels. A clock signal for controlling data word serial bit transmission is derived at each response unit from the address word signal.

Clearly, the '449 patent does not disclose or suggest a wireless user interface device appointed to receive messages and display them on a user output interface. Lacking such capability, any device constructed and operated in accordance with the disclosure of the '449 patent inherently cannot receive and present messages to a user thereof.

On the other hand, the audience participation system called for by applicant's claims 1-70 employs a wireless device to receive messages disseminated to participating spectators at a live spectator event. Furthermore, the system of present claims 1-70 is adapted to receive answers to queries presented to the spectators and process them using a central processor.

These structural and operational differences patentably distinguish the method and system recited by applicant's claims 1-70 from the '449 patent disclosure.

S. U. S. Patent Publication No. 2002/0029381 A1 to Inselberg

U. S. Patent Publication No. 2002/0029381 A1 to Inselberg (hereinafter the '381 publication) discloses an interactive audience participation method and device. The instant application claims priority of the '381 publication, which in turn claims priority of the '398 patent.

The '381 publication and the instant application share a common inventive identity, making the '381 publication unavailable as prior art under 35 USC §102 (a) or (e).

Since the claims of the '381 published patent application do not claim the same invention as that delineated by claims 1 – 70 of the instant Interactive Audience Participation System, a rejection for statutory double patenting over a patent issuing with the published claims of the '381 publication would be improper. Any obviousness-type double patenting rejection of the instant application over any patent issuing from the published '381 application can be obviated by the filing of a suitable statutory disclaimer. The '381 application is now U.S. Patent No. 6,650,903, issued August 18, 2003.

In light of at least the foregoing procedural considerations, claims 1 – 70 of the instant Interactive Audience Participation System are patentable over the '381 publication, as well as U.S. Patent No. 6,650,903.

T. U. S. Patent Publication No. 2002/0115454 A1 to Hardacker

U. S. Patent Publication No. 2002/0115454 A1 to Hardacker (hereinafter the '454 publication) discloses an on-location local multicast distribution system and business method therefor. Contemporaneous information is continuously provided to a local distribution unit on a particular event (e.g., a NASCAR race) from multiple input devices, such as video cameras and microphones. The distribution unit simultaneously transmits audio, video and event specific information to multiple uniquely identifiable output devices, each in the hands of a registered attendee. The input devices are in wireless communication with the distribution unit and the distribution unit is in wireless communication with the output devices. The uniquely identifiable output devices include a display such as a liquid crystal display and may be for example, a personal digital assistant (PDA). Registered attendees may select which of the multiple inputs are received. For an auto race the local distribution unit provides audio and video feeds from pit crews, racecars and individual driver and racecar statistics to individual attendees as selected. The '454 publication further discloses the sale of on-screen ads to advertisers and the use of wireless communication to order advertised concessions (e.g., food, drink,

memorabilia, and the like).

Significantly, the '454 publication does not disclose querying participants at a live spectator event. There is no disclosure or suggestion that the wireless units of the spectators be used when participating in contests or the like, based on answering queries posed either by messages disseminated through a user interactive device or announced or displayed at the event venue.

By way of contrast, the interactive audience participation method and system called for by applicant's claims 1-70 employs a wireless, interactive device for receiving and sending messages. In addition, the method delineated by applicant's claims entails presentation of queries to the participants, who are prompted to enter answers by use of the device. Such questioning permits contests to be held, advantageously enhancing the pleasure experienced by the participants of a system defined by present claims 1-70.

The foregoing structural and operational differences provide adequate basis for patentably distinguishing applicant's claims 1 – 70 from the disclosure of the '454 patent publication.

U. U.S. Patent Publication No. 2002/0119823 A1 to Beuschler

U. S. Patent Publication No. 2002/0119823 A1 to Beuschler (hereinafter the '823 publication) discloses a method of, and apparatus for, permitting a member of an audience of a controllable, real-life event, such as a football game, to participate in determining the outcome of the event. An audience member/participant can access a central controller using a remote user interface such as a computer terminal. The audience participant is allowed to select a desired course of action for the event. In the context of a football game, the audience participant selects the play to be performed by the football team. The selected play is transmitted to the central controller over a communications network such as the Internet. The play selected by a majority of audience participants is determined by the central controller. The coach of the football team accesses the central controller to obtain the majority-selected play, and then relays this play to the football team who performs the play in the game. In one embodiment of the present invention, the coach accesses a central controller using a

Personal Digital Assistant having wireless Internet capabilities.

Significantly, the '823 publication limits the audience participant to selecting a desired course of action for a controllable event. Such decisions made by the audience participants are related to play selection, player lineups, instant replay decisions, timeouts, and coaching personnel. The '823 publication does not provide additional queries that are not directly related to the live event, such as contests pertaining to sports trivia and other interactive activities of various sorts. Additionally, the '823 publication does not provide for queries related to opinions concerning items such as facilities, sponsors, players, management and concessions. By way of contrast, the Interactive Audience Participation System of present claims 1-70 calls for querying the participating spectators on topics related to the live event, as well as other topics that are not directly related to the live event. Responses to queries required by the system of applicant's claims may be beneficial to the venue's management, the team's owners, and the like.

These structural and procedural differences provide ample basis for predicated patentability of applicant's claims 1 – 70 over the '823 publication.

V. U.S. Patent Publication No. 2002/0199198 A1 to Stonedahl

U. S. Patent Publication No. 2002/0199198 A1 to Stonedahl (hereinafter the '198 publication) provides a system that enables an event or moments within an event to be captured and provided in a record that preserves at least some aspects of the participant's perspective of the event. In particular, the present invention involves centralized recording of the event in one or more modes including video, audio, and still image recordings and a system that enables a participant (i.e., one who perceives the event) to select portions of the event recording substantially contemporaneously with the event occurrence. A personalized record is made by duplicating the selected portions from the event record. In a particular example, the personalized record is recorded on a digital media such as a compact disc (CD) or digital video disk (DVD) or the like.

A participant operates a selection device to uniquely identify himself and make

selections by recording points in time or spans of time during the event that they wish to record. Preferably the selections are made as the event occurs in "real-time". By synchronizing the user selections with the centralized recording, portions of the centralized recording can be identified and duplicated to produce a unique compilation of selections for each participant. In this manner, each user can generate a personalized recording from the centralized recording, yet enjoy the advantages of personalizing the recording so that it reflects each participant's unique perspective and preferences.

Two general classes of remote selection devices are suggested: (i) immediate or real time transmission devices that operate to capture a participant selection and transmit it substantially immediately to an order processing system and (ii) timer-based or delayed transmission involving storage of the selections, for example in memory of a selection device. Real time transmission devices are said to include wireless selection devices such as cell phones, personal digital assistants (PDAs), laptop and palm computers with network connections, as well as special purpose wired selection devices built into or tethered to participant's seats. Wireless devices include any of a variety of wireless computing devices such as cell phones, and the like that include means for accessing network resources and communicating over a wireless network. Two-way wireless devices offer an advantage in some applications in that the system can signal a user when selections can be made, for example by causing the selection device to display a green light or other indicator during times when selections are valid.

By way of contrast, applicant's claims 1-70 provide an interactive audience participation method and system wherein a user at a live spectator event employs a wireless user interactive device for receiving messages and responding to disseminated queries. The queries called for by the system of applicant's claims may be presented as announcements or displays at the event venue, or may be displayed from the output interface of the interactive device. Furthermore, with the system of applicant's claims, the responses to the queries are transferred to a central processor and processed into results.

The foregoing structural, functional, and operational distinctions are submitted to provide ample basis for predicated patentability of applicant's claims 1 – 70 over the '198 patent publication.

W. Meridia Audience Response System at www.meridiaars.com

The Internet web page Meridia Audience Response System (hereinafter, the “Meridia disclosure”) provides an audience response system using a device having a touchpad keyboard interface and wireless, RF transmission to a computer which collects responses from an entire audience.

Significantly, there is no disclosure or suggestion that the Meridia system be used in connection with spectators at a live spectator event, as required by present claims 1-70. Unlike the system of applicant’s claims, the keypad device is not said to have an output interface; and thus it lacks the capability of disseminating messages to a participating user. Neither is there any disclosure or suggestion that results entered using the keypad be accumulated by a central processor, as required by applicant’s claims 1-70.

In light of these structural, operational, and functional differences, the Interactive Audience Participation System delineated by applicant’s claims 1-70 and the Meridia disclosure are patentably distinct.

X. Wireless Audience Response and Voting Systems at www.replysystems.com

The Internet web page Wireless Audience Response and Voting Systems (hereinafter, the “Wireless Audience disclosure”) discloses various wireless radio keypad data entry devices for use in assessing the response of an audience to a presentation in a venue such as a classroom, boardroom, or focus group meeting. The devices are said to be useful in applications such as market research and higher education. They permit entry of responses through a keypad and display of information in an alphanumeric display.

However, the Wireless Audience disclosure does not contemplate the use of any device in connection with spectators at a live spectator event. There is also no disclosure or suggestion of an

output interface.

By way of contrast, applicant's claims 1-70 call for an interactive audience participation system wherein queries are posed to spectators at a live spectator event and the participating spectators respond by entry on an interactive device, after which the answers are received and processed by a central processor.

These structural and functional differences strongly support patentability of applicant's claims 1-70 over the Wireless Audience disclosure.

Y. Presentation Testing at www.presentationtesting.com

The Internet web page Presentation Testing (hereinafter, the "Presentation Testing disclosure") discloses use of wireless devices having dial technology for improving business presentations. Audience members are provided with such a device and instructed to manipulate the dial during the course of a presentation to indicate their favorable or unfavorable reaction. A monitoring system records the responses and provides a record extending through the presentation of the indicated responses. The system is said to be more effective than traditional focus group or keypad-based audience response systems.



Significantly, the Presentation Testing disclosure does not provide any device having the capability of receiving messages or displaying such to a user. In addition, there is no suggestion that any system be used in connection with spectators at a live spectator event.

By way of contrast, the interactive audience participation system and method recited by applicant's claims 1-70 are appointed for use by participants at a live spectator event. Queries are posed to spectators and the participating spectators respond by entry on an interactive device, after which the answers are received and processed by a central processor. Advantageously, interactive participation required by applicant's claimed system and method provides a means for enhancing the enjoyment of the live event by participating spectators. Moreover, the stimulus of participating in

contests and the like that involve answering the queries posed enhances the enjoyment for the participating spectators of the system defined by applicant's claims.

In light of these structural and functional differences, the system and method of applicant's claims 1-70 patentably distinguishes the Presentation Testing disclosure.

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